IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: October 28, 2006

(1) I.T.A. No. 631 of 2005

M/s Jay Gases Pvt. Ltd.

v.

C.I.T., Leela Bhawan, Central Circle, Patiala

(2)I.T.A. No. 632 of 2005

M/s Jay Gases Pvt. Ltd.

v.

C.I.T., Leela Bhawan, Central Circle, Patiala.

Present: Mr. S.K.Mukhi and Mr. Rakesh Bakshi, Advocates
for the appellant.
Mr. Yogesh Putney, Advocate for the respondent.

CORAM:
Hon'ble Mr.Justice K.S.Garewal
Hon'ble Mr. Justice Rajesh Bindal

Rajesh Bindal, J.

This order shall dispose of the above-mentioned two appeals, as common questions of law and facts are involved. However, for the sake of reference, facts have been taken from I.T.A. No.631 of 2005.

The assessee has approached this Court by filing the present appeal raising the following substantial questions of law, arising out of order dated 1.8.2005, passed by the Income-Tax Appellate Tribunal Chandigarh Bench `B' (for short,`the Tribunal'), in I.T.A. Nos. 23 & 24/Chandi/2004, for the assessment year 1998-99:

> "(A) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts & in law in

confirming the action of C.I.T. (A) and thereby sustaining part of the addition to the extent of Rs. 5.46 lacs wherein both the said authorities having held the action of the A.O. in rejecting the books of accounts without specifying one single defect therein so that so any consequential addition under such circumstances is totally illegal and leads to perverse finding thereof.?

(B) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts & in law in upholding the action of C.I.T.(A) in sustaining part addition to the extent of Rs. 5.46 lacs by erroneously adopting the average consumption of electricity at 14 units on the basis of past history which factor having been negated by the ITAT for making any such addition as per its finding in para 14 so that so the orders of the ITAT in confirming the impugned part addition was contradictory of its findings and thus was bad in law and perverse?

(C)Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts & in law in reversing the orders of CIT(A) and thereby confirming the addition to the extent of Rs. 5.46 lacs as made by the A.O. by failing to appreciate the fact that the ITAT itself has in earlier years accepted the similar explanations of the appellant on the similar dispute of variation in the consumption of electricity units which was not disputed by the department before the Hon'ble High Court which in clear defiance of law of the land as laid down by the Hon'ble Supreme Court in the case of BERGER PAINTS INDIA LIMITED V/S CIT, 266 ITR 99 (SC)?

(D) Whether on the facts and in the circumstances of the case the findings of the Income Tax Appellate Tribunal in rejecting the appeal of the appellant are wrong and perverse ?"

The assessee derived income from manufacturing and sale of oxygen gas cylinders. Return for the assessment year in question was filed on 26.11.1999, showing taxable income as `nil', which was processed under Section 143(1)(a) of the Income-tax Act, 1961 (for short, `the Act') on the loss of Rs. 16,91,080/- on 27.5.1999. Thereafter, notices under Sections 143(2) and 142(1) of the Act were issued for regular assessment. During the course of assessment proceedings, it was

noticed that average consumption of electricity per gas cylinder produced came to 15.87 units. Finding the consumption to be quite excessive, a show cause notice was issued to the assessee, to which the assessee furnished its explanation. A perusal of the chart at Annexure `A' to the assessment order indicated that average consumption of power for production of each cylinder varied from 10.41 units to 29.55 units. The explanation of the assessee that consumption varied because on a number of occasions, the unit remained closed and for maintenance of a particular temperature, the power had to be consumed, was not found to be borne out from the record, as the plea raised by the assessee could not be substantiated from the record. When confronted with all these facts, the assessee stated that the issue has already been discussed in the order for the assessment year 197-98. This is evident from the order sheet entry dated 27.12.2000, as mentioned in the assessment order. Keeping in view the past record of the assessee, where he had admittedly concealed the production of gas cylinders and thereafter declared undisclosed income under VDIS and even during the year 1997-98, the average consumption of electricity was worked out at 13.50 units per cylinder, applying the same, production of cylinders was computed and income was assessed accordingly.

The Commissioner of Income-tax (Appeals) partially accepted the appeal of the assessee and taking the consumption at 15 units per cylinder, which was upheld by the Tribunal keeping in view the factum like, age of the plaint, ageing process of the machinery, emerging computation, sharing work load, frequent break down, labour problem etc.

The view expressed by the Tribunal, being a possible view, and the determination of income in the present case, being on estimate basis, by taking the consumption of electricity on comparative basis, we are of the opinion that merely because according to the assessee, some other estimation is also possible by applying a different formula or taking the consumption of electricity per cylinder at 15.87 units as against 15 units, the same would not fall within the four corners of

being a substantial question of law.

Accordingly, finding no merit, the appeals are dismissed.

(Rajesh Bindal)
Judge

(K.S.Garewal)
Judge

October 28 ,2006
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